

Remarks

This is in response to the Office Action mailed August 31, 2004, which withdrew claims 10, 14 and 24 and rejected claims 1-9, 11-13, 15-23 and 25.

The Applicant appreciates the detailed analysis and reasoning provided in the Office Action, and believes a brief telephonic interview would help to facilitate prosecution of the case. A Request for Interview PTO-413 Form has thus been submitted herewith. A tentative date for the interview has been suggested, but this should be changed as necessary in accordance with the Examiner's schedule. The Applicant thanks the Examiner for consideration of this request.

Restriction/Election and Election of Species Requirements

The Applicant gratefully acknowledges the withdrawal of the restriction/election requirement for Groups I and II. The election of species requirement was sustained and non-elected claims 10, 14 and 24 were withdrawn by the Examiner.

The Applicant affirms that claims 1-9, 11-13, 15-23 and 25 read on the elected species of FIGS. 8-10 and that claim 1 is a generic claim. Hence, upon allowance of claim 1 the Applicant will be entitled to consideration of withdrawn claims 10 and 14 which depend from claim 1.

Rejection of Claims Under 35 U.S.C. §102

Claims 1, 5, 6 and 18 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,490,995 issued to Greene Jr. ("Greene '995"). This is respectfully traversed.

First, Greene '995 does not appear to be available as prior art under §102(b). Greene '995 issued on December 10, 2002, which is less than one year prior to the filing

date of the present application of September 17, 2003. Greene '995 thus fails to meet the "one-year printed publication" requirement of §102(b). Moreover, there is nothing of record to indicate that the invention of Greene '995 was before the U.S. public pursuant to the "public use or on sale" requirement of §102(b) prior to the critical date. Accordingly, reconsideration and withdrawal of the rejection should be made on this basis.

However, since Greene '995 might be found to be available as prior art under another section of §102, the Applicant will proceed with a discussion of the patentability of the claims in view of the reference to advance the prosecution of the case.

With regard to claim 1, Greene '995 is at least deficient with regard to the recited removeably attachable climate conditioning unit being "*contactingly supported* by the housing at a position *a selected distance away from the climate conditioning aperture* so as to form a gap therebetween."

Greene '995 discloses at least two embodiments of an animal transporter assembly, the first generally set forth by FIGS. 1-5 and the second generally set forth by FIG. 6. Only the second embodiment of FIG. 6, which uses a secondary ice/power container 20 removeably attachable to the housing 2, 3 via flexible hose 22, appears germane to the present claims.

The hose 22 in Greene '995 is preferably characterized as a conventional "4-inch dryer" hose. See col. 5, lines 43-50. Although the manner in which the hose 22 is attached to the housing 2, 3 is not visible in FIG. 6, it would be inherently understood by the skilled artisan as being attached to the housing in a manner conventional for such hoses.

The Applicant respectfully submits that the separate container 20 (climate conditioning unit) is not *contactingly supported* by the housing 2, 3 as required by claim

1. Rather, the container 20, and the housing 2, 3, are both "supported" by the ground or other floor surface (interior of a mini-van, etc. – see col. 5, lines 19-21). It may be said that the container 20 "contacts" the housing 2, 3 via flexible hose 22, but to characterize such contact as meeting the "contactingly supported" requirement would eviscerate the use of the term "supported" in the claim – clearly both are required. See e.g., *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990) (every term in a claim is material and must be accounted for in an anticipation rejection).

Claim 1 further requires that the climate conditioning unit be contactingly supported by the housing *at a position* a selected distance away from the climate conditioning aperture so as to form a gap therebetween. Thus, the point of contacting support needs to be apart from the aperture. This is not disclosed by Greene '995.

The significance of this is that claim 1 further requires that the climate conditioning unit facilitates said flow of atmospheric air *through the gap and through the climate conditioning aperture* to the interior, as exemplified in broken line fashion in FIGS. 9 and 10. Having the gap open to the exterior environment in this way allows the climate conditioning aperture to draw the inlet air from the gap and on through the aperture into the interior of the housing (or vice versa). No such gap is disclosed by Greene '995.

Accordingly, since Greene '995 is deficient with regard to the above limitations, the Applicant requests reconsideration and withdrawal of the rejection of claim 1, as well as for the claims depending therefrom.

With regard to claim 18, this claim is drafted in accordance with 35 U.S.C. §112, sixth paragraph and includes "means for facilitating said flow of atmospheric air through the climate conditioning aperture." This element is accordingly construed in

accordance with the corresponding structure disclosed in the specification that carries out this recited function, and equivalents thereof. See MPEP §2181 *et seq.*

As noted in the previous response, this structure is identified in the specification at page 11, lines 1-10, and structure such as Greene '995 is expressly excluded (see page 11, lines 9-10). Expressly excluded structure cannot be considered as falling within the scope of the means element. See *In re Donaldson Co. Inc.*, 29 USPQ2d 1845 (Fed. Cir. 1994)(*en banc*), MPEP Accordingly, when claim 18 is properly construed, the claim defines subject matter that is patentable over Greene '995. Reconsideration and withdrawal of the rejection of claim 18 are respectfully requested on this basis.

Rejection of Claims Under 35 U.S.C. §103(a)

Various rejections of the claims were provided under 35 U.S.C. §103(a). Each of these will be discussed briefly in turn.

1. Claims 22 and 23

Claims 22 and 23 were rejected as being obvious over U.S. Patent No. 5,575,239 issued to Bradburn et al. ("Bradburn '239") in view of U.S. Patent No. 1,198,524 issued to Cunliffe ("Cunliffe '524"). This rejection is respectfully traversed.

The Applicant agrees that Bradburn '239 is deficient with regard to the claimed subject matter, but submits that Cunliffe '524 fails to make up for these deficiencies of Bradburn '239.

Cunliffe '524 teaches a collapsible shipping crate that can be assembled into a set-up position (FIG. 1), a knocked-down (flat) position (FIG. 2), and a knocked-down and folded position (FIG. 3). See col. 1, lines 24-29; col. 2, lines 87-107.

Contrary to the Examiner's characterization, the locking member 18 in Cunliffe '524 is not inserted through the hinge 15 to allow the top 6 to be hingedly rotated from either side thereof; rather, the top 6 remains permanently hinged on a single side to panel 3 via hinge 15 for each of the states of FIGS. 1-3.

The member 18 is a locking member that is inserted through beads 16, 17 to lock the top 6 in the set-up position of FIG. 1, and is inserted through hinged cleats 20 to lock the crate in the collapsed and folded position of FIG. 3. See col. 2, lines 58-70. Note that Cunliffe '524 is silent with regard to using the locking member 18 as a hinge member about which a portion of the crate rotates.

Cunliffe '524 states that "the invention consists in providing the crate with a plurality of hingedly connected sections so connected and arranged that the crate can be securely locked in either the set-up or knocked-down positions." (col. 1, lines 13-17). The various locations of the permanent hinges, and the respective sizes of the various panels, are thus selected to achieve this end. See e.g., col. 1, lines 45-51. Making the top 6 of Cunliffe '524 reversibly hingeable would defeat the above stated purpose and characterization of the invention.

Moreover, since Cunliffe '524 only hinges the top 6 from one side, one skilled in the art would not be motivated in view of Cunliffe '524 to modify Bradburn '239 to arrive at the claimed combination as set forth by claim 22. Evidence for such motivation to combine must be "clear and particular," and no such showing has been made, or can be made in view of these particular references. See *In re Dembiczaik*, 50 USPQ2d 1614 (Fed. Cir. 1999). Accordingly, reconsideration and withdrawal of the rejection of claim 22 under §103(a) are respectfully solicited.

Reconsideration and withdrawal of the rejection of claim 23 are requested on the basis that claim 23 depends from a claim that is believed to be patentable for the foregoing reasons.

2. Claims 19 and 25

Claims 19 and 25 were rejected as being obvious over Greene '995 in view of Cunliffe '524. This is respectfully traversed on the basis that Cunliffe '524 fails to teach or suggest making the top 6 hingeably pivotable from both directions, as discussed above. Thus, Cunliffe '524 adds nothing of significance to the single-sided hinge top of Greene '995, and reconsideration and withdrawal of the rejection of these claims are accordingly solicited.

3. Claims 16, 17, 20 and 21

Claims 16, 17, 20 and 21 were rejected as being obvious over Greene '995 in view of U.S. Patent No. 5,193,483 issued to Crider ("Crider '483"). This is respectfully traversed at least on the basis that these claims depend from patentable base claims for the reasons stated above.

4. Claims 1, 2, 5, 6, 9, 11, 12, 13 and 15

Claims 1, 2, 5, 6, 9, 11, 12, 13 and 15 were rejected as being obvious over Bradburn '239 in view of U.S. Patent No. 5,887,436 issued to Duddleston ("Duddleston '436"). This is respectfully traversed.

The Applicant generally agrees that Bradburn '239 is at least deficient with regard to the climate conditioning aperture, but submits that Duddleston '436 fails to make up for this deficiency. The portable cooling system 40 of Duddleston '436 is not

removeably attachable to the housing 20, but rather is permanently affixed to and integrated with said housing. See, e.g., FIG. 4 of Duddleston '436. As such, Duddleston '436 fails to meet the "removeably attachable" requirement as well as the "gap" requirement, as discussed above.

Moreover, making the system 40 of Duddleston '436 removeably attachable would still not result in the claimed combination since the claims further require the system to be contactingly supported at a point a selected distance away from the aperture (instead of *in* the aperture as shown in FIG. 4 of Duddleston '436). Likewise, the recited gap limitations of claim 1 would also not be met by merely making the system 40 removeably attachable.

Other limitations from the rejected claims are also not met by the recited combination. For example, the cover member in claim 2 is recited as having a greater cross-sectional area than the aperture. Since the cover is mounted as recited in claim 1 at a point a selected distance away from the aperture, this configuration reduces restrictions in the flow of air into or out of the housing through the gap, as well as providing improved coverage to prevent rain or other precipitation from entering the housing. See, e.g., FIGS. 1, 9-10.

Accordingly, reconsideration and withdrawal of the rejection of these claims are respectfully solicited.

5. Claims 3 and 4

Claims 3 and 4 were rejected as being obvious over Bradburn '239 in view of Duddleston '436, further in view of U.S. Patent No. 3,068,341 to Ortiz et al. ("Ortiz '341"). This rejection is respectfully traversed on the basis that Ortiz '341 fails to make

up for the deficiencies of Bradburn '239 and Duddleston '436, and therefore these claims are patentable as depending from a patentable base claim.

6. Claims 7 and 8

Claims 7 and 8 were rejected as being obvious over Bradburn '239 in view of Duddleston '436, further in view of U.S. Patent No. 3,160,139 issued to Wales Jr. ("Wales '139"). This is respectfully traversed on the basis that Wales '139 fails to make up for the deficiencies of Bradburn '239 and Duddleston '436, and therefore these claims are patentable as depending from a patentable base claim.

7. Claims 16 and 17

Claims 16 and 17 were rejected as being obvious over Bradburn '239 and Duddleston '436, further in view of Crider '483. This is respectfully traversed on the basis that Crider '483 fails to make up for the deficiencies of Bradburn '239 and Duddleston '436, and therefore these claims are patentable as depending from a patentable base claim.

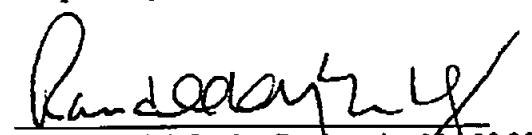
Conclusion

This Response is intended to be a complete response to the Office Action mailed August 31, 2004. The Applicant respectfully requests that the Examiner reconsider the application and allow all of the pending claims.

Should any questions arise concerning this response, the Examiner is invited to contact the below signed Attorney.

Respectfully submitted,

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